No. 03-21-00053-CV
No. 03-20-00294-CV

In the Court of Appeals for the Third District of Texas at Austin

No. 03-21-00053-CV

Mary Louise Serafine, *Appellant*
v.
Karin Crump, et al.
Appellees

From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601

No. 03-20-00294-CV

Mary Louise Serafine,
Appellant/Cross-Appellee
v.
Alexander Blunt et al.
Appellees/Cross-Appellants

From the 250th Judicial District Court of Travis County, Texas,
Hon. Lora J. Livingston, presiding and
Hon. Karin Crump, presiding,
Cause No. D-1-GN-12-001270

APPELLANT'S RENEWED MOTIONS ARISING FROM NEW EVENTS

TO THE HONORABLE THIRD COURT OF APPEALS:

This filing respectfully asks the Court to revisit two of Appellant's prior motions—one that affected Appellant's Brief after a member of the court urged denial of Appellant's critical extension of time, one for ordering findings and conclusions. New and recent events make this motion necessary.

Background

On March 30, 2021, the Supreme Court of Texas, on this Court's recommendation, denied Appellant's request to transfer both of the above cases to other courts of appeals on grounds, we urged, that this Court and the majority of its members were disqualified or should recuse in one or both cases. Half of this Court did in fact recuse in one or both cases. Since that denial of transfer, new events show that the Court is deeply disqualified, which works a harm against Appellant and shows that a fair appeal cannot be had in this Court in either case. At a minimum, the appearance of bias would be obvious to a member of the public.

On June 25, 2021, Appellant filed in this Court a request that the Supreme Court transfer both of these case to neutral courts of appeals. A more detailed description of the recent events is contained in that motion, thus they are described only briefly here. This motion is made regardless of the Supreme Court's decision, if it considers the motion. This motion is filed and paid for in each of the two cases, Nos. 03-21-53-CV and 03-20-294-CV.

Motions

Appellant respectfully asks the Court

1. in "21-53," to grant Appellant's prior, critical motion for extension of time to file Appellant's Brief. Exhibit 1. The brief pertains to the "vexatious litigant" issue—a motion that we maintain was brought in bad faith and granted after a sham hearing. On the deadline day, a sitting justice *of this very court*, and two former justices, filed a written opposition to the motion. Because we did not hear a decision from the Court on the extension, we were compelled to file a sub-standard brief that compromises Appellant's position. We filed it with a reiterated request for extension. Exhibit 2. Two days later the Court denied the motion. The motion should be revisited and granted, notwithstanding a *recused* member of the Court urged denial, plus other matters in their opposition.
2. in "20-294," to grant Appellant's prior motion for ordering findings of facts and conclusions of law regarding the denial in the trial court of Judge Livingston's disqualification. Appellant then asks to be allowed to supplement Appellant's Brief (and allow an opposing response). Judge Livingston adjudicated 20-294 at the same time that she was a witness and party in 21-53. She was appointed over Appellant's objection. Appellant moved to disqualify her before any substantive ruling. This Court denied

Appellant's motion to order findings and conclusions. That denial is now law of the case and, absent reversal, compelled Appellant to drop the issue. It is futile to appeal a disqualification without findings and conclusions. The issue should now be revisited because of the facts below.

Recent events that require Appellant to file this motion.

The "21-53" case.

A sitting member of the Court—*who had recused from the case*—plus two prior members of the Court, filed a written opposition to Appellant's motion for extension at Exhibit 1. Appellant's motion was filed on June 17, 2021, and the Justices' opposition was filed on the deadline day, June 21, 2021. The sitting Justice not only asked her own court to deny the extension, but went further and asked <u>*her own court*</u> to deny any <u>*other*</u> motions by Appellant. Standing alone, this is outrageous and shocks the conscience. It demonstrates undeniably why a case involving a jurist *as a party* cannot proceed in the Jurist's own court. Justice Goodwin should have stopped there, but she goes on. She tells her court to move ahead quickly, making an irrelevant *ad hominem* attack. "It is logical to infer," she tells her court, that

> Serafine has been seeking multiple extensions of her challenge to the trial court declaring her vexatious in the hopes that the federal court would declare the statute

unconstitutional, rendering this appeal unnecessary.

Opposition at 2.

Her opposition was successful. The extension, which would normally be routine, was denied on June 23, 2021, two days after we were compelled to file a compromised Appellant's Brief. However, we indicated we still wanted the extension and wished to amend. *See* Exhibit 2. Without completing the brief, this outcome compromises this appeal and any others. Justice Goodwin has, in reality, not recused from this case, but has harmed it in her favor.

There is additional conduct that compromises the Court's neutrality, but it does not directly affect the extension.[1]

The "20-294" appeal.[2] A central point in this case is that—far from imposing any serious SLAPP sanction in Serafine's favor—the trial judge, Judge Livingston (and before her, Judge Crump), protected Alexander Blunt's perjurious SLAPP testimony and affirmatively advocated for him. In their most recent brief of May 21, 2021, Blunt's lawyer is trying to show the Third Court that the trial

---

[1] Justice Goodwin recently authored *Connor v. Hooks*, No. 03-19-00198-CV (Tex. App.—Austin Mar. 5, 2021) (Mem. Op.). There, she opines on the constitutionality of Chapter 11—an issue that she has been actively litigating against Appellant. The U.S. Supreme Court found in *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986) that a judge, under similar circumstances acted as "a judge in his own case," and should have recused. *Id.* at 822.

[2] Mr. Vinson and Ms. Serafine are counsel in the 21-53 case. Ms. Serafine is counsel in the 20-294 case.

judge "stated on the record that she reviewed all of Serafine's filings..." and had made a determination "[c]ontrary to Serafine's argument that 'the trial court simply ignored the uncontroverted evidence of fabrication and false testimony.'" In fact, the Blunts' brief related, Judge Livingston had said her own determination was "***consistent with prior determinations by then-Judge Triana and then-Justice Pemberton.***"[3] This was a shocking revelation.

Blunts' brief then quotes the Judge as she speaks on the record about jurists Triana and Pemberton and herself: "[N]one of us found what you're [Serafine] saying to be supported by the evidence…."[4]

Justice Triana now sits on the Third Court and Justice Pemberton previously did. Astonishingly, Judge Livingston is explaining her ruling to Appellant by ***citing her own ex parte communications regarding the "evidence" with two jurists on or related to the reviewing court.*** This is prohibited *ex parte* communication. The trial court and appellate court are two different courts. The appellate court is supposed to give an independent review, based on only the record. In fact the full quotation shows the Judge admonishing *Serafine* for insisting that Blunt's false testimony is shown by *evidence*, because the judge herself and two others—"us,"

---

[3] *Appellees' Brief* in 03-20-294-CV, May 21, 2021, at 4-5, parentheses removed.

[4] *Ibid.*

she says—somehow did not find the uncontroverted evidence persuasive. In the full passage relied on by the Blunts' brief, the Judge explains:

> ***But what you don't seem to recognize is that there is another possibility, which is none of us found what you're saying to be supported by the evidence.***

RR.3:23.

Communication should not take place between the trial court and reviewing court about a substantive matter before the appellate decision. The probative value of the evidence is substantive. Here the trial judge is representing what Triana and Pemberton thought of the evidence. One court analyzing *ex parte* judicial communications in the criminal context notes that "*ex parte* communication from an appellate tribunal is suggestive of improper influence in the criminal justice context"; but [o]nly *ex parte* communications that introduce new and material information to the deciding official will violate the due process guarantee of notice." *Rupert v. Geren*, 605 F. Supp. 2d 705, 720 (D. Md. 2009). What jurists Triana and Pemberton believe about the evidence is "new" and "material." This type of communication is fatal to neutrality. It should not have occurred.

Appellant had objected to Judge Livingston's appointment and moved to disqualify her on important grounds before she had made a substantive ruling. An appeal of this type of issue, however, is often futile if there are no findings and

conclusions, because the issue must be briefed as to all possible grounds.

On September 1, 2020, at the outset of this appeal, Appellant asked this Court to order findings and conclusions. The Court denied the motion. It now turns out that Judge Livingston was additionally disqualified by contact with the appellate court, in addition to Serafine's previous grounds. The issue of her qualification to adjudicate this case should be heard in this Court, based on the trial court judge's findings and conclusions, which should now be ordered.

Conclusion

The Court should reconsider and grant Appellant's motion filed on June 17, 2021 for extension of time in 21-53. Exhibit 1 (motion), 2 (supplement). The Court should also reconsider and grant Appellant's motion of September 1, 2020 to direct the visiting trial court judge to file findings of fact and conclusions of law. Exhibit 3.

Respectfully submitted,

/s/ John W. Vinson
John W. Vinson,
Counsel of Record
State Bar No. 20590010
John W. Vinson, PLC
PO Box 301678
Austin, TX 78703
Tel: (512) 926-7380
Email: johnvinsonatty@yahoo.com

/s/ Mary Lou Serafine
Mary Louise Serafine
State Bar No. 24048301
Mary Louise Serafine,
Attorney & Counselor at Law
P.O. Box 4342
Austin, Texas 78765
Tel: (512) 220-5452
Email: serafine@mlserafine.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that this document was filed in the Third Court of Appeals in Cases Numbered 03-20-294-CV and 03-21-53-CV, and served on those below via the court's electronic filing system.

Anthony J. Nelson, Esq., tony.nelson@traviscountytx.gov
Patrick T. Pope, Esq., patrick.pope@traviscountytx.gov
Office of Delia Garza, Travis County Attorney
P. O. Box 1748, Austin, Texas 78767
(512) 854-9415/ Fax (512) 854-4808
Attorneys for Appellee the Hon. Karin Crump

Courtney Corbello, Esq., courtney.corbello@oag.texas.gov
Law Enforcement Defense Division, Office of the Attorney General
P.O. Box 12548, Capitol Station, Austin, Texas 78711
(512) 463-2080 / Fax (512) 370-9374
Attorney for Appellees the Hon. Melissa Goodwin,
the Hon. Bob Pemberton, and the Hon. David Puryear

Ronald Max Raydon, Esq.
The Raydon Firm, LLC
Two Riverway, Suite 845, Houston, Texas 77056
Attorney For Scott Lockhart and Austin Drainage & Foundation, LLC

Jeff D. Otto, Esq.,
Thompson, Coe, Cousins & Irons, L.L.P.
701 Brazos, # 1500, Austin, Texas 78701
Attorneys for Viking Fence Company, Ltd., Viking GP, LLC.,
Salvatore Chavarria, Jennifer Chavarria, and James Clanin

Amanda G. Taylor, Esq.
Butler Snow LLP
1400 Lavaca Street, Suite 1000
Austin, TX 78701
Attorney for Appellees/Cross-Appellants Alexander Blunt and Ashley Blunt

/s/ Mary Lou Serafine
Mary Louise Serafine, State Bar No. 24048301

Certificate of Conference

Both of the original motions, Exhibit 1 and Exhibit 3, contain certificates showing that I conferred with the relevant counsel on each motion, and opposing counsel were opposed. Further conference would not result in any change of position on their part.

/s/ Mary Lou Serafine
Mary Louise Serafine, State Bar No. 24048301

EXHIBIT 1

No. 03-21-00053-CV

In the Court of Appeals for the Third District of Texas at Austin

Mary Louise Serafine,
Appellant
v.
Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas; and Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas; David Puryear and Bob Pemberton, in their individual capacities as former justices of the Third Court of Appeals at Austin, Texas,[1]
Appellees

From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601

APPELLANT'S OPPOSED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO THE HONORABLE THIRD COURT OF APPEALS:

This is a third request for an extension of time of 30 days on behalf of Appellant Mary Louise Serafine for the filing of Appellant's Brief. For the

[1] Although we do not press the issue at this time, Appellant maintains the position that during 2019, Judge Livingston and Justices Triana and Baker became defendants in their official capacity only, by operation of the successor substitution rules.

reasons below, a shorter extension of 14 or 21 days will not address the problem. Appellant's Brief is currently due in four days on June 21, 2021. If granted, a 30-day extension would extend the time ***to and including July 21, 2021*** for the filing of Appellant's Brief. Counsel for Appellees are opposed to this motion, although they did not give a reason.

Reasons for extension of time

The reason for asking for the extension is the time pressure of work. Within the same time period as work was required to be done on this brief, we had to respond in federal court[2] on June 1st to a dispositive motion; had to file motions or replies of our own on May 25th and 26th and June 9th and 16th, and filed a partly-dispositive motion on June 14th. In that same case, close in time to the current deadline here, we expect to file two Replies on June 30th.

One of us (Serafine) filed a brief in this Court in a related case[3] on May 21st, must file a motion in that case yet this week, and has a Reply brief deadline on June 30th, close in time to the June 21st deadline here.

There will be no prejudice to Appellees. They will not reap

---

[2] The case is Civil Action No. 1:20-cv-1249-RP, in which we represent the same party, Ms. Serafine.

[3] Case No. 03-20-924-CV.

additional relief by the appeal and have not cross-appealed.

This motion is not for delay, but so the Court can receive responsible briefing. We recognize that Appellant has two attorneys on this case and that we are requesting a third extension. Both of us, however, are needed to produce Appellant's Brief in a responsible manner.

For these reasons, Appellant respectfully requests an extension of time, for Appellant's opening brief, to and including July 21, 2021.

Respectfully submitted,

/s/ John W. Vinson
John W. Vinson
Counsel of Record
State Bar No. 20590010
John W. Vinson, PLLC
PO Box 301678
Austin, TX 78703
Tel: (512) 926-7380
Email: johnvinsonatty@yahoo.com

/s/ Mary Lou Serafine
Mary Louise Serafine
State Bar No. 24048301
Mary Louise Serafine,
Attorney & Counselor at Law
P.O. Box 4342
Austin, Texas 78765
Tel: 512-220-5452
Email: serafine@mlserafine.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

My signature below certifies that on the 17th day of June, 2021, I served the foregoing document on the parties listed below through the Court's electronic filing system.

Anthony J. Nelson, Esq., tony.nelson@traviscountytx.gov
Patrick T. Pope, Esq., patrick.pope@traviscountytx.gov
Office of Delia Garza, County Attorney, Travis County

P. O. Box 1748, Austin, Texas 78767
(512) 854-9513/Fax (512) 854-4808
Attorneys for Appellee the Hon. Karin Crump

Courtney Corbello, Esq., courtney.corbello@oag.texas.gov
Law Enforcement Defense Division, Office of the Attorney General
P.O. Box 12548, Capitol Station, Austin, Texas 78711
(512) 463-2080 / Fax (512) 370-9374
Attorney for Appellees the Hon. Melissa Goodwin,
the Hon. Bob Pemberton, and the Hon. David Puryear

/s/ Mary Lou Serafine
Mary Louise Serafine
State Bar No. 24048301

CERTIFICATE OF CONFERENCE

We conferred by email with the opposing counsel listed above on June 17, 2021. On the same day, they responded to us that they are opposed to the motion, although they did not specify a reason.

/s/ Mary Lou Serafine
Mary Louise Serafine
State Bar No. 24048301

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Serafine on behalf of Mary Serafine
Bar No. 24048301
serafine@mlserafine.com
Envelope ID: 54541652
Status as of 6/18/2021 8:16 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Courtney Corbello	24097533	courtney.corbello@oag.texas.gov	6/17/2021 6:11:26 PM	SENT
Anthony J. Nelson	14885800	tony.nelson@traviscountytx.gov	6/17/2021 6:11:26 PM	SENT
John Willis Vinson	20590010	johnvinsonatty@yahoo.com	6/17/2021 6:11:26 PM	SENT
Patrick Pope	24079151	patrick.pope@traviscountytx.gov	6/17/2021 6:11:26 PM	SENT
Mary LouiseSerafine		serafine@mlserafine.com	6/17/2021 6:11:26 PM	SENT

EXHIBIT 2

No. 03-21-00053-CV

In the Court of Appeals for the Third District of Texas at Austin

Mary Louise Serafine,
Appellant
v.
Karin Crump, in her individual and official capacities as Presiding Judge of the 250th Civil District Court of Travis County, Texas; and Melissa Goodwin, in her individual and official capacities as Justice of the Third Court of Appeals at Austin, Texas; David Puryear and Bob Pemberton, in their individual capacities as former justices of the Third Court of Appeals at Austin, Texas,
Appellees

From the 345th Judicial District Court of Travis County, Texas,
Hon. Todd A. Blomerth, presiding,
Cause No. D-1-GN-19-002601

SUPPLEMENT TO APPELLANT'S OPPOSED MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

TO THE HONORABLE THIRD COURT OF APPEALS:

On June 17, 2021, on behalf of Plaintiff/Appellant, we filed an opposed motion for a third extension of time to file Appellant's Brief. Without an extension, it is due today, June 21, 2021. The reasons for the extension as expressed in that motion remain fully alive. Also today,

opponents filed a written opposition to the motion for time. We plan to file a reply to that opposition within a matter of hours, so that the Court has the correct information.

At the same time, we respect the Court's deadlines and rules. Therefore, we have timely filed an Appellant's Brief on today's date, June 21, 2021. In the event the Court does grant Appellant's motion for extension of time, we would like to file an Amended Appellant's Brief in the time granted.

Respectfully submitted,

/s/ John W. Vinson
John W. Vinson
Counsel of Record
State Bar No. 20590010
John W. Vinson, PLLC
PO Box 301678
Austin, TX 78703
Tel: (512) 926-7380
Email: johnvinsonatty@yahoo.com

/s/ Mary Lou Serafine
Mary Louise Serafine
State Bar No. 24048301
Mary Louise Serafine,
Attorney & Counselor at Law
P.O. Box 4342
Austin, Texas 78765
Tel: 512-220-5452
Email: serafine@mlserafine.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

My signature below certifies that on the 21st day of June, 2021, I served the foregoing document on the parties listed below through the Court's electronic filing system.

Anthony J. Nelson, Esq., tony.nelson@traviscountytx.gov
Patrick T. Pope, Esq., patrick.pope@traviscountytx.gov
Office of Delia Garza, County Attorney, Travis County
P. O. Box 1748, Austin, Texas 78767

(512) 854-9513/Fax (512) 854-4808
Attorneys for Appellee the Hon. Karin Crump

Courtney Corbello, Esq., courtney.corbello@oag.texas.gov
Law Enforcement Defense Division, Office of the Attorney General
P.O. Box 12548, Capitol Station, Austin, Texas 78711
(512) 463-2080 / Fax (512) 370-9374
Attorney for Appellees the Hon. Melissa Goodwin,
the Hon. Bob Pemberton, and the Hon. David Puryear

/s/ Mary Lou Serafine
Mary Louise Serafine
State Bar No. 24048301

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Serafine on behalf of Mary Serafine
Bar No. 24048301
serafine@mlserafine.com
Envelope ID: 54631223
Status as of 6/23/2021 10:56 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Courtney Corbello	24097533	courtney.corbello@oag.texas.gov	6/21/2021 11:14:46 PM	SENT
Anthony J. Nelson	14885800	tony.nelson@traviscountytx.gov	6/21/2021 11:14:46 PM	SENT
John Willis Vinson	20590010	johnvinsonatty@yahoo.com	6/21/2021 11:14:46 PM	SENT
Patrick Pope	24079151	patrick.pope@traviscountytx.gov	6/21/2021 11:14:46 PM	SENT
Mary LouiseSerafine		serafine@mlserafine.com	6/21/2021 11:14:46 PM	SENT

EXHIBIT 3

This exhibit includes the motion (10 pages) but omits 185 pages of attachments.

No. 03-20-00294

In the Court of Appeals for the Third District of Texas at Austin

Mary Louise Serafine,
Appellant
v.
Alexander Blunt and Ashley Blunt,
Appellees

From the 250th Judicial District Court of Travis County, Texas,
Hon. Lora J. Livingston, presiding,
Cause No. D-1-GN-12-001270

APPELLANT'S MOTION TO ABATE AND REMAND FOR ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE THIRD COURT OF APPEALS:

A central issue in this case is that the Honorable Lora J. Livingston was disqualified from adjudicating this remanded matter, should have recused herself, and thereafter confirmed these facts by failing to act as a neutral arbiter. Appellant's motion to disqualify or recuse Judge Livingston was filed before she made substantive rulings (except for setting a hearing). The motion was denied by the Honorable David Peeples, sitting

by assignment.

Appellant Mary Louise Serafine (Appellant or Serafine) wishes to ask that the Court abate this appeal and remand to Judge Peeples for entry of findings of fact and conclusions of law (FFCL or findings and conclusions).[1] Findings and conclusions were properly requested. Their omission "[f]orc[es] the appellant to guess at the trial court's reasons for rendering judgment...." *Larry F. Smith, Inc. v. The Weber Co., Inc.*, 110 S.W.3d 611, 614 (Tex. App.—Dallas 2003). It is harmful error unless the record demonstrates otherwise. *Ibid.*

A request to abate and remand for entry of findings and conclusions may properly be made, as here, by motion. *Harbor Ventures, Inc. v. Dalton*, No. 03-10-00690-CV (Tex. App.—Austin Dec. 1, 2010) (granting "motion to abate and remand to the trial court for findings of fact and conclusions of law"); *Barnes v. Barnes*, No. 05-16-00241-CV (Tex. App.—Dallas Oct. 11, 2016) (same). This apparently addresses opponents' major objection. *See* Certificate of Conference, *infra*. Such a motion conserves resources because if a party complains about lack of FFCL in

---

[1] By filing this motion, Appellant does not waive the right to request the same relief concerning findings and conclusions by the Honorable Lora J. Livingston.

appellant's brief, and was successful on it, the remedy would be the same, only later in time.[2]

FACTUAL BACKGROUND

Judge Peeples took evidence but did not file FFCL.

On November 15 and 18, 2019, Appellant filed a motion and supplement thereto to disqualify or recuse Judge Livingston. On November 25, 2019, Judge Peeples held an evidentiary hearing on the motion, took testimony, and admitted 14 of Appellant's exhibits.[3] On the same date he signed an order denying Appellant's motion to disqualify or recuse Judge Livingston.

---

[2] "[O]n appeal, the usual remedy...[for the trial court's failure to file findings of fact and conclusions of law]...is to abate the appeal for entry of findings and conclusions." Alan Wright, et al., *Appellate Practice and Procedure*, 57 SMU L. Rev. 515, 567 (2004) (citing *Lubbock County Cent. Appraisal Dist. v. Contrarez*, 102 S.W.3d 424, 426 (Tex. App.—Amarillo 2003, no pet.)). *Available at* https://scholar.smu.edu/smulr/vol57/iss3/3

Moreover, "[w]hen the trial court's failure is harmful, the preferred remedy is for the appellate court to direct the trial court to file the missing findings." *A.D. Villarai, LLC v. Chan IL Pak*, 519 S.W.3d 132, 136 (Tex. 2017) (cleaned up). "If the trial court still fails to file the findings, the appellate court must reverse the trial court's judgment and remand the case for a new trial." *Ibid.*

[3] Exhibits admitted into evidence (or used as demonstrative evidence) and available to Judge Peeples included the then-operative federal complaint, docket sheets for the relevant cases, text of applicable successor substitution rules, and the Texas equivalent, among others.

On December 11, 2019, within 20 days after the order,[4] Appellant timely filed a request for FFCL under Tex. R. Civ. P. 296 and 297. **Exhibit 1.** On January 2, 2020, Appellant timely filed a notice of past due FFCL pursuant to Tex. R. Civ. P. 297. **Exhibit 2.** Judge Peeples did not file FFCL. (N.B.: The court later set aside the sanctions order it had entered.)

Judge Livingston signed the final judgment in this case on May 7, 2020. On May 22, 2020, within 20 days thereafter, Appellant timely filed a second request to Judge Peeples to file FFCL. **Exhibit 3.** On June 19, 2020, Appellant timely filed a notice of past due FFCL pursuant to Tex. R. Civ. P. 297. **Exhibit 4.** Judge Peeples did not file FFCL.

Findings and conclusions are needed because the issue is fact-intensive.

The issue to be appealed was fully set forth before Judge Peeples—that in a civil rights law suit filed by Appellant in 2017, Judge Livingston replaced Judge Crump by the operation of federal successor substitution rules. These are Federal Rule of Civil Procedure

---

[4] A request for findings of fact and conclusions of law is properly filed within the prescribed time after the *order* is filed. *See Birnbaum v. Law Offices of G. David Westfall*, 120 S.W.3d 470, 476 (Tex. App.—Dallas 2003)(under Rule 296, holding party's request for findings of fact and conclusions of law "untimely" because it was filed more than twenty days after the date of the sanctions order). *Birnbaum*, however, is not binding on this Court.

25(d)[5] and Federal Rule of Appellate Procedure 43(c)(2).[6] Appellant argues that Judge Livingston was conflicted by her role in that suit and was "conflicted by having 'acted in concert' in the suit with Judge Crump." **Exhibit 5 at 5, Exhibit 6**. It is unnecessary to detail the suit in this motion. It is enough to say that the suit in question sought against four judges the relief that is provided by federal law for the protection of due process

---

[5] Fed. R. Civ. P. 25(d) provides in relevant part:

> An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

[6] Fed. R. App. P. 42(c)(2) provides:

> Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

rights.[7] 42 U.S.C. § 1983.[8] *See also Heckman v. Williamson County*, 369 S.W.3d 137 (Tex. 2012). The complaint on file at the time of Judge Livingston's substitution is shown as **Exhibit 8**.

ARGUMENT

Judge Peeples' failure to file FFCL requires "guessing" the reasons.

Without findings and conclusions, Appellant cannot determine whether Judge Peeples' denial of Appellant's motion was based on:

1. the conclusion that the federal rules of successor substitution did not operate, thus Judge Livingston was ***not*** a defendant in the federal case related to this one; or

2. the conclusion that, even as a defendant, Judge Livingston was ***not conflicted*** and no appearance of impropriety arose; or

3. the conclusion that Judge Livingston was not conflicted by her prior assistance in Judge Crump's defense; or

---

[7] Defendants, in addition to Judge Livingston, were Judge Karin Crump and Justices Puryear, Pemberton, and Goodwin.

[8] In relevant part the section places conditions on injunctive relief, but by implication has been interpreted to allow both kinds of prospective relief:

> [I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. §1983 (1996).

4. the conclusion that Serafine's motion was faulty for reasons in the Blunts' opposition. **Exhibit 7**.

There is no substitute for the missing findings and conclusions.

Neither oral statements by a judge nor statements in an order can substitute for the absence of FFCL. *See Larry F. Smith,* 110 S.W.3d at 615 (rejecting oral statements as substitute for FFCL, because "in the absence of written findings and conclusions, the trial court's judgment implies all necessary fact findings in support of the judgment," which would be harmful to the party who properly requested findings and conclusions).

Likewise statements in an order "do not constitute true 'fact findings' because they were not separately filed," as required by Tex. R. Civ. P. 299a. *See Casino Magic Corp. v. King*, 43 S.W.3d 14, 19 n.6 (Tex. App.—Dallas 2001, pet. denied).

Applicable legal standard

A trial court's findings and conclusions may be helpful to an appellate court even in assessing whether the trial court abused its discretion. *See Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 851-52 (Tex. 1992) (orig. proceeding) (review of "death penalty" discovery sanction). "[I]f a court fails to file findings when the facts are disputed, the burden of

rebutting every presumed finding can be so burdensome that it effectively prevents the appellant from properly presenting its case to the court of appeals or [the supreme court]." *A.D. Villarai, LLC v. Chan IL Pak*, 519 S.W.3d 132, 135 (Tex. 2017) (cleaned up). Thus the "trial court's failure to file findings...is...presumed harmful, unless the record before the appellate court affirmatively shows that the complaining party has suffered no injury." *Ibid*. (cleaned up).

CONCLUSION

For the above reasons, the Court should abate this appeal and remand to Judge Peeples for entry of findings of fact and conclusions of law.

Respectfully submitted,

By: M. L. Serafine

Mary Louise Serafine
State Bar No. 24048301
Mary Louise Serafine,
Attorney & Counselor at Law
P O. Box 4342, Austin, Texas 78765
Telephone: (512) 220-5452
Email: serafine@mlserafine.com
Attorney for Appellant

CERTIFICATE OF CONFERENCE

Cross-Appellants and Appellees Alexander Blunt and Ashley Blunt are the only active parties on this appeal. They are represented by the firm of Butler Snow. I attempted in good faith to confer on this motion by sending an email to Amanda Taylor of that firm on August 31, 2020. Tex. R. App.

P. 10.1(a)(5). She responded that she was opposed because

> [t]here is no rule of civil or appellate procedure that allows for such a motion. If you believe that I am mistaken about that, please direct me to the rule.

The rules do not spell out every possible type of motion. The lack of seriousness in the response indicated further conference would not be productive.

By: M. L. Serafine
MARY LOUISE SERAFINE
State Bar No. 24048301

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing document has been delivered via e-service through the Court's electronic filing system on the counsel below, on this the 1st day of September, 2020.

Ronald Max Raydon, Esq.
The Raydon Firm, LLC
Two Riverway, Suite 845, Houston, Texas 77056
Attorney For Scott Lockhart and Austin Drainage & Foundation, LLC

Amanda G. Taylor, Esq.
Butler Snow LLP
515 Congress Avenue, Suite 1900, Austin, Texas 78701
(737) 802-1800
Attorney for Appellees/Cross-Appellants Alexander Blunt and Ashley Blunt

Jeff D. Otto, Esq.,
Thompson, Coe, Cousins & Irons, L.L.P.
701 Brazos, # 1500, Austin, Texas 78701
Attorneys for Viking Fence Company, Ltd., Viking GP, LLC., Salvatore Chavarria, Jennifer Chavarria, and James Clanin

By: M. L. Serafine

MARY LOUISE SERAFINE
State Bar No. 24048301

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Serafine on behalf of Mary Serafine
Bar No. 24048301
serafine@mlserafine.com
Envelope ID: 54820447
Status as of 6/28/2021 8:58 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Courtney Corbello	24097533	courtney.corbello@oag.texas.gov	6/27/2021 10:50:39 PM	SENT
Anthony J. Nelson	14885800	tony.nelson@traviscountytx.gov	6/27/2021 10:50:39 PM	SENT
John Willis Vinson	20590010	johnvinsonatty@yahoo.com	6/27/2021 10:50:39 PM	SENT
Patrick Pope	24079151	patrick.pope@traviscountytx.gov	6/27/2021 10:50:39 PM	SENT
Mary LouiseSerafine		serafine@mlserafine.com	6/27/2021 10:50:39 PM	SENT